

SECOND JUDICIAL DISTRICT COURT  
COUNTY OF BERNALILLO  
STATE OF NEW MEXICO

ENDORSED  
FILED IN MY OFFICE THIS  
JULY 13 2010  
*Juanita M. Loran*  
CLERK DISTRICT COURT  
ANGELICA LOPEZ

MOUNTAIN STATES MUTUAL CASUALTY COMPANY,  
a New Mexico Corporation, and  
MOUNTAIN STATES INDEMNITY COMPANY,  
a New Mexico Corporation,

Plaintiffs,

CV 2010 08 372

v.

No. \_\_\_\_\_

LONGFORD HOMES OF NEW MEXICO, INC.,  
LONGFORD AT PARADISE SKIES, L.P.,  
LONGFORD AT SUNRISE RANCH, LLC,  
LONGFORD GROUP, INC., and  
LONGFORD HOMES HOLDING, LLC,

Defendants.

**COMPLAINT FOR DECLARATORY RELIEF**

Plaintiffs Mountain States Mutual Casualty Company and Mountain States Indemnity Company (collectively referred to as "Mountain States") hereby bring this complaint against Longford Homes of New Mexico, Inc., Longford at Paradise Skies, L.P., Longford at Sunrise Ranch, L.L.C., Longford Group, Inc., and Longford Homes Holdings, LLC (collectively referred to below as "Longford") and allege as follows:

**THE PARTIES**

1. Mountain States Mutual Casualty Company and Mountain States Indemnity Company are New Mexico corporations engaged in the business of insurance, with their principal places of business in Albuquerque, New Mexico. Founded in 1973 in New Mexico, its mission is to provide quality property and casualty insurance products and services to business

owners in the Southwest/Mountain States Region for the benefit of its policyholders. Mountain States currently serves businesses in New Mexico, Colorado, Texas and Utah.

2. Defendant Longford Homes of New Mexico, Inc. is a Nevada corporation engaged in the construction industry in Bernalillo County, with its principal New Mexico address as 7007 Jefferson Blvd, Suite A, Albuquerque, New Mexico 87109.

3. Defendant Longford at Paradise Skies is a Nevada limited partnership engaged in the construction industry in the County of Bernalillo, State of New Mexico.

4. Defendant Longford at Sunrise Ranch LLC is a Nevada Corporation engaged in the construction industry in Bernalillo County, with its principal New Mexico address as 7007 Jefferson Blvd, NE, Albuquerque, New Mexico 87109.

5. Defendant Longford Group, Inc. is a foreign corporation registered in the State of New Mexico to engage in the construction industry in Bernalillo County, with its principal New Mexico address at 7707 Jefferson Blvd NE, Suite A, Albuquerque, New Mexico 87109.

6. Upon information and belief, Defendant Longford Homes Holdings, LLC is a Nevada limited liability company engaged in the construction industry in the State of New Mexico.

7. The Court has jurisdiction over the parties and the subject matter of this proceeding pursuant to the New Mexico Declaratory Judgment Act, NMSA 1978, §§ 44-6-1 to 44-6-15 (2009).

8. This Court has jurisdiction over the instant matter.

9. Venue is appropriate in the Second Judicial District because the cause of action arises from construction work in the Paradise Skies and Sunrise Ranch Subdivisions located in Albuquerque, New Mexico.

## GENERAL ALLEGATIONS

10. Upon information and belief, all Defendants are affiliates of the Longford Group, a national developer which has been constructing residential, commercial and multi-family buildings since 1991.

11. The Longford Group boasts that it has built over 20,000 homes nationwide in the last quarter century and, upon information and belief, the Longford Group has a national team of land planners, engineers, architects and construction specialists which target areas throughout the United States to develop master communities and pre-designed homes using pre-designed floor plans and building specifications.

12. Upon information and belief, in order to conduct business in a particular state and in order to develop a particular “master community,” the Longford Group forms one or more limited liability companies in each local community where it plans to build.

13. New Mexico is one of the states into which the Longford Group has moved and, upon information and belief, the Longford Group has formed more than fifteen limited liability companies in New Mexico to build master communities in Albuquerque and Santa Fe.

14. Upon information and belief, the Longford limited liability companies in New Mexico are using the same pre-designed models as a basis for the master communities and homes that the Longford Group has used throughout the country.

15. Upon information and belief, several Longford limited liability companies have faced suit in Nevada and Colorado over the last few years for, *inter alia*, defects in the predesigned floor plans and building specifications – the same designs that, upon information and belief, Longford is using in New Mexico.

16. Now, Longford faces suit in New Mexico for, *inter alia*, alleged defective construction and faulty workmanship of the Longford homes at Paradise Skies, *Armijo, C., et al. v. Longford at Paradies Skies, Longford Homes of NM, Inc., Longford Group Inc., and Armstrong General Contractors, Inc.*, CV-2007-06153.

17. Longford also faces suit in New Mexico for, *inter alia*, alleged defective construction and faulty workmanship of the Longford homes at Sunrise Ranch, *Aguilar, et al. v. Longord at Sunrise Ranch, et al.*, CV-2007-6152.

18. The Longford Defendants have demanded from Mountain States a defense and indemnity in the *Armijo* and *Aguilar* cases for the claims of defective construction and faulty workmanship brought by the named homeowner plaintiffs.

19. Mountain States has never issued a policy of insurance to Longford.

20. The Mountain States insurance policies at issue in the case *sub judice* were issued to many local construction subcontractors (the “Subcontractors”) hired by Longford to perform services according to Longford’s pre-designed floor plans and building specifications which Longford used to develop and construct the Paradise Skies and Sunrise Ranch projects.

21. Indeed, rather than purchase its own local insurance contract as the General Contractor and Developer for the Paradise Skies and Sunrise Ranch projects, Longford insisted that each of the new Mexico Subcontractors name Longford as an “Additional Insured” on their respective Mountain States insurance policies as a condition precedent to Longford using local companies to assist in Longford’s Paradise Skies and Sunrise Ranch projects.

22. Upon information and belief, the Longford homes at Paradise Skies and Sunrise Ranch were sold to homeowners for approximately \$115,000-\$117,000.

23. Upon information and belief, the most money that Longford paid any one of the Subcontractors for work performed on the Paradise Skies and Sunrise Ranch projects was approximately \$5,000. Despite this minimal investment, Longford nonetheless refuses to obtain – and pay for – its own insurance coverage for construction work performed in New Mexico but has instead demanded that the Subcontractors add Longford to their own respective policies, which coverage Longford now seeks to trigger for alleged negligence in building Longford's pre-designed homes using Longford's pre-designed floor plans and Longford's building specifications.

24. The Mountain States policies at issue in the Paradise Skies project are as follows:

Insured/Claim No.	Policy Number	Policies
Oso Construction	CPP 0076837	5-15-01 to 06-01-09
Trujillo & Sons	SCP 0077950	08-07-02 to 11-27-02
Darrell Julian Construction	CPP 0073106	10-01-02 to present
Los Ranchos Mechanical	SCP 0070022	02-25-01 to 08-12-01
M & K Industries	CPP 0096702	11-01-03 to 11-01-06
Windsor Door Sales	CPP 0067897	08-01-00 – 08-1-02
Territorial Landscape	CPP 0101714	09-01-04 to present
Custom Grading	CPP 0071356	05-17-01 to present
Chavez Roofing	CPP 0075055	01-01-00 to present
BDC Door	CPP 0065717	11-30-99 to 11-30-00 And 11-30-01 to 11-30-02
Ken's Plumbing	CPP 0082261	5-17-03 to present
Unique Drywall	CPI 0075256	02-07-02 to 02-07-05

Affidavit of Coverage for Mountain States Policies listed above, attached hereto as Exhibit A.

25. The Mountain States policies at issue in the Sunrise Ranch project are as follows:

Insured/Claim No.	Policy Number	Policies
Construction Contracting and Management	CPP 0203340	01-01-05 to present
Lopez Roofing Services, Inc.	CPP 095177	01-01-04 to present
Apache Construction	CGL 0001494	03-01-93 to 03-01-99
Windsor Door Sales	CPP 0067897	08-01-00 – 08-01-02
Territorial Landscape	CPP 0101714	09-01-04 to present
Custom Grading	CPP 0071356	05-17-01 to present
Chavez Roofing	CPP 0075055	01-01-00 to present
Ken's Plumbing	CPP 0082261	05-17-03 to present
Unique Drywall	CPI 0075256	02-07-02 to 02-07-05
Aspen Landscape Management, Inc.	CPP 0107238	10-21-05 to present

Exhibit A.

26. The individual Mountain States policies issued to the Subcontractors each provided coverage to the respective subcontractor-company pursuant to an Insuring Agreement, as follows:

SECTION I - COVERAGES

COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend any "suit" seeking those damages to which this insurance applies. However, we will have no duty to defend any party against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may at our discretion investigate any "occurrence" and settle any claim or "suit" that may result.

b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) the "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"; and
- (2) the "bodily injury" or "property damage" occurs during the policy period.

A true and correct copy of the applicable Mountain States' Coverage Forms (1997, 2002) are attached hereto as Exhibit B and C respectively.

27. Upon information and belief, the Certificates of Occupancy for the Paradise Skies homes were issued between July, 1999 and November, 2003.

28. Upon information and belief, the Certificates of Occupancy for the Sunrise Ranch homes were issued between December, 2000 and May, 2004.

29. Upon information and belief, none of the Plaintiffs in the *Armijo* and *Aguilar* cases experienced any alleged injury until January, 2007, when they received "expert" reports written by experts that, upon information and belief, were hired by out-of-state counsel (who have been suing Longford throughout the country), which reports apprised them of alleged defective construction they had not previously known existed.

30. Upon information and belief, Longford maintains that it was identified as an "Additional Insured" on the respective insurance policies with Mountain States prior to the end date of Longford's contracts with the Subcontractors.

31. Upon information and belief, the last date of the respective contracts between Longford and the Subcontractors occurred *before* the respective policy periods of insurance began.

32. Upon information and belief, an "occurrence" has not been identified to trigger coverage under the respective Mountain States policies at issue in this matter where claims of faulty workmanship do not give rise to "property damage caused by an occurrence" within the meaning of the Subcontractors' policies with Mountain States.

33. Notwithstanding the fact that Mountain States does not believe "occurrences" during the respective policy periods have been articulated in the *Armijo* complaint, Mountain

States agreed to defend Longford with respect to the allegations raised by the homeowners in the Paradise Skies complaint under a full reservation of rights on October 6, 2009.

34. With respect to the allegations of faulty construction on the Sunrise Ranch project, Longford has made demand for coverage from Mountain States as an additional insured on at least one policy held by a subcontractor who performed work on that project.

35. Although the *Armijo* suit was originally filed in July, 2007, no summons was apparently issued and, upon information and belief, the original complaint was dismissed by the Court *sua sponte* in February, 2008, for lack of prosecution. An amended complaint was filed on April 23, 2008, naming twelve Defendants specifically and one hundred more as "Does."

36. Thereafter, summonses were served on the respective many first-party and third-party defendants for another couple of months and an initial series of answers, counterclaims, cross claims and motions to dismiss were then filed and briefed until November, 2008. Upon information and belief, only initial rounds of discovery among the myriad parties had begun during this time and, after the Court took action upon one or more of the motions to dismiss, another series of answers were filed extending until March 1, 2009, when the judge then-presiding was reassigned. A new judge was appointed on April 28, 2009 by stipulation and, thereafter, discovery appears to have re-commenced.

37. Mountain States' acceptance of the Longford tender under a full reservation of rights occurred about a week before the judge then-presiding was reassigned yet again.

38. At the time that Mountain States agreed to defend Longford under a full reservation of rights, Longford mistakenly demanded the unilateral right to choose counsel to provide that defense and continues to so demand this right. The Mountain States policies at issue in this matter, however, afford Mountain States the right and power to hire counsel of its choice

to provide any defense which it undertakes. Longford has refused Mountain States' acceptance of Longford's tender of defense as an "Additional Insured" under full reservation of rights.

39. Longford also demands that Mountain States pay not only for the *defense* of the *Armijo* matter but also for prosecution of any third-party plaintiff action that Longford may choose to bring against subcontractors on the Paradise Skies project.

40. The Subcontractors' policies with Mountain States do not afford coverage to Longford as an "Additional Insured" for alleged faulty construction with respect to either the Paradise Skies or Sunrise Ranch projects.

41. Even if one or more of the Subcontractors' policies were to afford coverage to Longford as an "Additional Insured," the only policies that *could* afford coverage to Longford would be those policies in effect at the time of an "occurrence."

42. The "occurrence" at issue in this case took place in January, 2007, when the homeowners secured an expert report identifying allegedly faulty construction in the Paradise Skies and Sunrise Ranch projects.

43. Most, if not all, of the policies described herein had already expired by January, 2007.

44. Even if one or more of the policies described herein had not expired at a time when an "occurrence" took place, such policy(ies) do not afford coverage for Longford to prosecute affirmative claims against third-party defendants some of whom may include the named insured on the policy allegedly affording Longford the "Additional Insured" insurance coverage.

45. Even if one or more of the policies described herein had not expired at a time when an "occurrence" took place, such policy(ies) do not appear to afford indemnity coverage to

Longford as an “Additional Insured” for the damages alleged by the homeowners in the *Armijo* and *Aguilar* complaints.

46. Thus, there is an actual controversy between Mountain States and Longford as to whether demand for payment by Longford is for “property damage” caused by an “occurrence” “during the policy period,” as those terms are defined in the respective policies issued by Mountain States to the Subcontractors identified herein.

47. Although Longford maintains that the dates of Plaintiffs’ “construction defect” injuries occurred during the period of time when the Subcontractors held policies with Mountain States, the respective “expert” reports identifying the alleged defective construction were not issued until January, 2007, which in most cases was years and years *after* the expiration of the Mountain States policy periods under which Longford demands coverage.

48. Thus, there is also an actual controversy between Mountain States and Longford as to the legal scope of the defense offered to Longford under reservation of rights regarding the right to choose defense counsel, the duty *vel non* to pay for Longford’s prosecution of third-party claims against subcontractors, and whether or not there exists a duty to indemnify Longford by Mountain States for any other relief requested by the plaintiffs in the underlying matters.

**COUNT I  
REQUEST FOR DECLARATORY RELIEF**

49. Mountain States incorporates the allegations of paragraphs 1 through 36 of the complaint, as if fully set forth herein.

50. The Commercial General Liability Policies issued by Mountain States to the Subcontractors provide coverage for “property damage” caused by an “occurrence...during the policy period” and excludes coverage for the following non-accidental circumstances:

SECON I - COVERAGES

COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

2. Exclusions

This insurance does not apply to:

A. Expected or Intended Injury

"Bodily injury" or "property damage" expected or intended from the perspective of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

B. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or
- (2) That the insured would have in the absence of the contract or agreement.

K. Damage to Your Product

"Property damage" to "your product" resulting from it or any part of it.

L. Damage to Your Work

"Property damage" to "your work" resulting from it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

M. Damage to Impaired Property or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, resulting from:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property resulting from sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

S. Subsidence of Land

"Bodily injury" or "property damage" caused by the subsidence of land resulting from or attributable to any operation of the insured.

For the purposes of this exclusion, subsidence of land means the movement, sinking, settling, upheaval, sliding, collapse, abatement or disturbance of land.

Exhibits B and C.

51. "The following definitions apply under the Mountain States policies:

#### SECTION V - DEFINITIONS

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

11. "Occurrence" means an accident, including continuous exposure to substantially the same general harmful conditions.

14. "Products-Completed operations hazard."

a. includes all "bodily injury" and "property damage" occurring away from premises you own or rent and resulting from "your product" or "your work" except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned.

b. "Your work" will be deemed completed at the earliest of the following times:

- (1) When all of the work called for in your contract has been completed.
- (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.

(3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as complete.

15. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss shall be deemed to occur at the time of the "occurrence" that caused it.

19. "Your Work" means:

a. Means:

- (1) work or operations performed by you or on your behalf; and
- (2) materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- (2) The providing or failure to provide warnings or instructions.

*Id.*

52. Upon information and belief, the alleged defects in the construction of the Paradise Skies and Sunrise Ranch projects include faulty workmanship and do not include allegations of resultant damages caused by work performed by an entity insured by Mountain States during an applicable policy period.

53. A commercial general liability policy is not a performance bond and does not serve as a guarantee of workmanship and faulty workmanship does not implicate “accidental” conduct.

54. Mountain States seeks a declaration that no occurrence, or accident, has been articulated by Longford through its tender for defense and indemnity.

55. Mountain States seeks a declaration that even if an occurrence has been articulated by Longford, such occurrence has not been alleged to have occurred during an applicable policy period during which Longford was an “Additional Insured” on an “occurrence” based policy with Mountain States.

56. Mountain States seeks further declaration that even if an occurrence has been articulated for the policy period at issue in this case, indemnification coverage is excluded by the policy for the following circumstances: “Expected or Intended Injury;” “Contractual Liability;” “Damage to Your Product;” “Damage to Your Work;” “Damage to Impaired Property or Property Not Physically Injured;” “Subsidence of Land;” and pursuant to the definitions of terms (in Section IV of the policy) reflected in the foregoing listed exclusions. *Id.*

57. Finally, Mountain States also seeks a declaration that it has the right under the insurance policies at issue in this matter to define the scope of the defense it has offered to Longford, including the right to choose defense counsel and the right to deny payment for prosecution of third-party affirmative claims made by Longford against subcontractors.

58. By reason of the foregoing, there now exists an actual, justiciable controversy between the parties hereto, and this Court has the power and authority to declare the rights and obligations of those parties in connection with the relevant policies, and, specifically, to declare that Mountain States is required neither to defend nor indemnify Longford in the *Armijo* and *Aguilar* matters.

**WHEREFORE**, Plaintiffs Mountain States Indemnity Company and Mountain States Mutual Casualty Company respectfully request this Court to declare the rights and obligations of the parties hereto in accordance with Mountain States' contentions herein; specifically, finding that Mountain States is not obligated to provide a defense or indemnity to Longford, and awarding Mountain States such other and further relief, including its costs, as this Court deems just and proper.

MODRALL SPERLING ROEHL HARRIS & SISK, P.A.

By: Samantha Adams  
Timothy L. Fields  
Samantha M. Adams  
Attorneys for Plaintiff  
Post Office Box 2168  
Bank of America Centre, Suite 1000  
500 Fourth Street, N.W.  
Albuquerque, New Mexico 87103-2168  
Telephone: (505) 848-1800

SECOND JUDICIAL DISTRICT COURT  
COUNTY OF BERNALILLO  
STATE OF NEW MEXICO

MOUNTAIN STATES MUTUAL CASUALTY COMPANY,  
a New Mexico Corporation, and  
MOUNTAIN STATES INDEMNITY COMPANY,  
a New Mexico Corporation,  
Plaintiffs,

v.

No. \_\_\_\_\_

LONGFORD HOMES OF NEW MEXICO, INC.,  
LONGFORD AT PARADISE SKIES, L.P.,  
LONGFORD AT SUNRISE RANCH, LLC,  
LONGFORD GROUP, INC., and  
LONGFORD HOMES HOLDING, LLC,  
Defendants.

**AFFIDAVIT OF STACEY SCHERER**

Stacey E. Scherer, upon oath, deposes and states:

1. I am Insurance Counsel for Mountain States Mutual Casualty Company and Mountain States Indemnity Company in Albuquerque, New Mexico.
2. Mountain States Indemnity Company issued General Liability policy number CPI 0103340 to Construction Contracting and Management with coverage dates of January 1, 2005 through January 1, 2006. Mountain States Mutual Casualty Company issued General Liability policy number CPP 0103340 to Construction Contracting and Management with an inception date of January 1, 2006.
3. Mountain States Mutual Casualty Company issued General Liability policy number CPP 095177 to Lopez Roofing Services, Inc. with coverage dates of January 1, 2004 through June 30, 2009.
4. Mountain States Mutual Casualty Company issued General Liability policy number CGL 0001494 to Apache Construction with coverage dates of March 1, 1993 through March 1, 1999.
5. Mountain States Mutual Casualty Company issued General Liability policy number CPP 0067897 to Windsor Door Sales with coverage dates of August 1, 2000 through August 1, 2002.
6. Mountain States Mutual Casualty Company issued General Liability policy number CPP 0101714 to Territorial Landscape with an inception date of September 1, 2004.
7. Mountain States Mutual Casualty Company issued General Liability policy number CPP 0071356 to Custom Grading with an inception date of May 17, 2001.
8. Mountain States Mutual Casualty Company issued General Liability policy number CPP 0075055 to Chavez Roofing with an inception date of January 1, 2000.
9. Mountain States Mutual Casualty Company issued General Liability policy number CPP 0082261 to Ken's Plumbing with an inception date of May 17, 2003.
10. Mountain States Indemnity Company issued General Liability policy number CPI 0075256 to Unique Drywall with coverage dates of February 7, 2002 through February 7, 2005.

EXHIBIT

tabbies

A

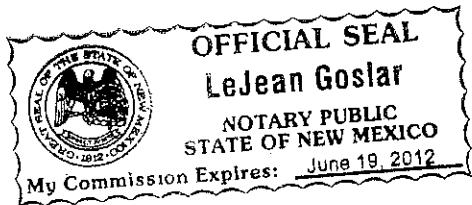
11. Mountain States Mutual Casualty Company issued General Liability policy number CPP 0107238 to Aspen Landscape Management, Inc. with an inception date of October 21, 2005.
12. Mountain States Mutual Casualty Company issued General Liability policy number CPP 0076837 to Oso Construction with coverage dates of May 15, 2001 through June 1, 2009.
13. Mountain States Mutual Casualty Company issued General Liability policy number SCP 0077950 to Trujillo & Sons Construction with coverage dates of August 7, 2002 through November 27, 2002.
14. Mountain States Mutual Casualty Company issued General Liability policy number CPP 0073106 to Darrell Julian Construction with coverage dates of October 1, 1996 through October 1, 1999, and October 1, 2001 through August 1, 2009.
15. Mountain States Mutual Casualty Company issued General Liability policy number SCP 0070022 to Los Ranchos Mechanical with coverage dates of February 25, 2001 through August 12, 2001.
16. Mountain States Mutual Casualty Company issued General Liability policy number CPP 0096702 to M&K Industries d/b/a Davis Kitchens with coverage dates of November 1, 2003 through November 1, 2006.
17. Mountain States Mutual Casualty Company issued General Liability policy number CPP 0065717 to BDC Door with coverage dates of November 30, 1999 through November 30, 2002.
18. Mountain States Indemnity Company issued General Liability policy number CII 0095881 to Armstrong General Contractors with coverage dates of September 1, 2000 through September 1, 2009.

FURTHER, AFFIANT SAYETH NAUGHT.

  
STACEY E. SCHERER

STATE OF NEW MEXICO                  )  
    ) ss.  
COUNTY OF BERNAILLO                  )

This instrument was acknowledged before me on the 13<sup>th</sup> day of July, 2010, by  
Stacey E. Scherer.



LeJean Goslar  
Notary Public

(Seal)

My commission expires: June 19, 2012

# COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. If the Named Insured is a corporation, partnership or limited liability company, "you" and "your" only refers to the corporation, partnership or limited liability company and not to the principals, officers or any other natural person. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to DEFINITIONS - (SECTION V).

## **SECTION I - COVERAGES**

### **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

#### **1. Insuring Agreement**

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend any "suit" seeking those damages to which this insurance applies. However, we will have no duty to defend any party against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may at our discretion investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in LIMITS OF INSURANCE (SECTION III); and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A AND B.

b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"; and
- (2) The "bodily injury" or "property damage" occurs during the policy period.

c. Damages because of "bodily injury" includes damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

#### **2. Exclusions**

This insurance does not apply to:

##### **a. Expected or Intended Injury**

"Bodily injury" or "property damage expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

##### **b. Contractual Liability**

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or
- (2) That the insured would have in the absence of the contract or agreement.

##### **c. Liquor Liability**

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

##### **d. Workers' Compensation and Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

**e. Employer's Liability**

"Bodily injury" to:

- (1) An employee, "leased worker" or "temporary worker" of the insured arising out of and in the course of employment by the insured; or
- (2) The spouse, child, parent, brother or sister of that employee, "leased worker" or "temporary worker" of the insured as a consequence of (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

**f. Pollution**

(1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants:

- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured;
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations:
  - (i) If the pollutants are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or
  - (ii) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

Subparagraph (d)(i) does not apply to "bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electric, hydraulic or mechanical functions necessary for the operation of

"mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the fuels, lubricants or other operating fluids are intentionally discharged, dispersed or released, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent to be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor.

Subparagraphs (a) and (d)(i) do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

(2) Any loss, cost or expense arising out of any:

- (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or
- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, asbestos, lead and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**g. Aircraft, Auto or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 51 feet long; and
  - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in paragraph f.(2) or f.(3) of the definition of "mobile equipment" (SECTION V - DEFINITIONS).

#### **h. Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice or preparation for, a racing, speed or demolition contest or in any stunting activity.

#### **i. War**

"Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

#### **j. Damage to Property**

"Property damage" to:

- (1) Property you own, rent, lease or occupy;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property you hold for storage, sale or safekeeping;
- (4) Tools or equipment loaned to you if the tools or equipment are being used to perform operations at the time of loss.

For the purposes of this paragraph (4), the most we will pay for tools or equipment loaned to you is \$10,000 per "occurrence".

- (5) Property on your premises for the purpose of having operations performed on it by you or on your behalf;
- (6) Property in your custody which is to be installed, erected or used in construction by you; or
- (7) That particular part of any property;
  - (a) on which you or any contractor or subcontractor working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
  - (b) that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (4), (5), (6) and (7) of this exclusion

do not apply to liability assumed under a side-track agreement.

Paragraph (7)(b) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

#### **k. Damage to Your Product**

"Property damage" to "your product" arising out of it or any part of it.

#### **l. Damage to Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

#### **m. Damage to Impaired Property or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

#### **n. Recall of Products, Work or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

#### **o. Asbestos**

"Bodily injury" or "property damage" arising out of or in any way related to Asbestos. We will have no obligation to investigate, defend, pay defense costs, or in any way participate in the settlement or judgment of any claims, "suit" or proceeding involving or allegedly involving Asbestos. As used in this exclusion, the term Asbestos includes, but is not limited to:

- (1) Asbestos;
- (2) Asbestos products;

- (3) Asbestos fibers;
- (4) Asbestos containing materials; or
- (5) Asbestos dust.

**p. Subsidence of Land**

"Bodily injury" or "property damage" caused by the "subsidence of land" arising out of or attributable to any operation of the insured.

For the purposes of this exclusion, "subsidence of land" means the movement, sinking, settling, upheaval, sliding, collapse, abatement or disturbance of land.

**q. Lead**

"Bodily injury" or "property damage" arising out of or caused by:

- (1) lead, paint containing lead, or any other material or substance containing lead;
- (2) any legal obligation of yours for indemnification or contribution due to damages arising out of lead, paint containing lead or any other material or substance containing lead;
- (3) any loss, cost or expense arising out of any governmental direction or request that you test for, monitor, clean up, remove, abate, contain, treat, detoxify or neutralize lead, paint containing lead or any other substance or material containing lead.

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with the permission of the owner. A separate limit of insurance applies to this coverage as described in LIMITS OF INSURANCE (SECTION III).

**COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY**

**1. Insuring Agreement**

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal injury" or "advertising injury" to which this coverage applies. We will have the right and duty to defend any "suit" seeking those damages to which this coverage applies. However, we will have no duty to defend any party against any "suit" seeking damages for "personal injury" or "advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in LIMITS OF INSURANCE (SECTION III); and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under

**Coverage C.**

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A AND B.

b. This insurance applies to:

- (1) "Personal injury" caused by an offense arising out of your business, excluding advertising, publishing, broadcasting or telecasting done by or for you;
- (2) "Advertising injury" caused by an offense committed in the course of advertising your goods, products or services;

but only if the offense was committed in the "coverage territory" during the policy period.

**2. Exclusions**

This insurance does not apply to:

a. "Personal injury" or "advertising injury":

- (1) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of the willful violation of a penal statute or ordinance committed by or with the consent of the insured; or
- (4) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement; or

b. "Advertising injury" arising out of:

- (1) Breach of contract, other than misappropriation of advertising ideas under an implied contract;
- (2) The failure of goods, products or services to conform with advertised quality or performance;
- (3) The wrong description of the price of goods, products or services; or
- (4) An offense committed by an insured whose business is advertising, broadcasting, publishing or telecasting.

c. Any loss, cost or expense arising out of any:

- (1) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or
- (2) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any

way responding to, or assessing the effects of pollutants.

- (3) "Personal injury" or "advertising injury" which would not have occurred in whole or in part, but for the actual or alleged dispersal or seepage of pollutants.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, asbestos, lead, and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

### **COVERAGE C. MEDICAL PAYMENTS**

#### **1. Insuring Agreement**

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
  - (1) On premises you own or rent;
  - (2) On ways next to premises you own or rent; or
  - (3) Because of your operations;
 provided that:
  - (1) The accident takes place in the "coverage territory" and during the policy period;
  - (2) The expenses are incurred and reported to us within one year of the date of the accident; and
  - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.
- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:
  - (1) First aid administered at the time of an accident;
  - (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
  - (3) Necessary ambulance, hospital, professional nursing and funeral services.

#### **2. Exclusions**

We will not pay expenses for "bodily injury":

- a. To any insured.
- b. To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. To a person injured on that part of premises you own or rent that the person normally occupies.
- d. To a person, whether or not an employee of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.
- e. To a person injured while taking part in athletics.
- f. Included within the "products-completed operation hazard".
- g. Excluded under Coverage A.

- h. Due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

### **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B**

We will pay, with respect to any claim or "suit" we defend:

1. All expenses we incur.
2. Up to \$1000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
3. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
4. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.
5. All costs taxed against the insured in the "suit".
6. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
7. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

### **SECTION II - WHO IS AN INSURED**

1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
2. Each of the following is also an insured:
  - a. Your employees, other than either your "executive officers" ( if you are an organization other than a partnership, joint venture or limited liability com-

pany) or your managers ( if you are a limited liability company ), but only for acts within the scope of their employment by you, including rendering first aid in an emergency. However, none of these employees is an insured for:

(1) "Bodily injury" or "personal injury":

- (a) To you, to your partners or members ( if you are a partnership or joint venture ), to your members ( if you are a limited liability company ), or to a co-employee while that co-employee is either in the course of his or her employment or performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-employee as a consequence of such "bodily injury" or "personal injury";
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury;

(2) "Property damage" to property:

- (a) Owned, occupied or used by;
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your employees, any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

- b. Any person (other than your employee), or any organization while acting as your real estate manager.
  - c. Any person or organization having proper temporary custody of your property if you die, but only:
    - (1) With respect to liability arising out of the maintenance or use of that property; and
    - (2) Until your legal representative has been appointed.
  - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:
- a. "Bodily injury" to a co-employee of the person driving the equipment; or
  - b. "Property damage" to property owned by, rented to,

in the charge of or occupied by you or the employer of any person who is an insured under this provision.

- 4. Any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
  - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. Coverage B does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.
- 5. Any person or organization to whom or to which you are obligated by virtue of a written contract, agreement or permit to provide such insurance as afforded by this policy is an insured, but only with respect to liability arising out of:
  - a. "Your work" for that insured by you;
  - b. Permits issued by state or political subdivisions for operations performed by you; or
  - c. Premises you own, rent, occupy or use.

This provision does not apply unless the written contract or agreement has been executed, or the permit has been issued, prior to the "bodily injury", "property damage", "personal injury" or "advertising injury".

This provision does not apply to any person or organization for "your products". The ADDITIONAL INSURED - VENDORS endorsement must be attached to the policy to provide coverage for "your products".

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

### SECTION III - LIMITS OF INSURANCE

- 1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
  - d. Persons or organizations included by virtue of written contract, agreement or permit. Their Limits of Insurance shall be the limit required by that written contract, agreement or permit or the Limits of Insurance of this policy, whichever is less, and shall not be in addition to the Limits of Insurance shown in

the Declarations.

2. The General Aggregate Limit is the most we will pay for the sum of:
  - a. Medical expenses under Coverage C;
  - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  - c. Damages under Coverage B.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal injury" and all "advertising injury" sustained by any one person or organization.
5. Subject to 2. or 3. Above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - a. Damages under Coverage A; and
  - b. Medical expenses under Coverage C
 because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to 5. above, the Fire Damage Limit is the most we will pay under Coverage A for damages because of "property damage" to premises, while rented to you or temporarily occupied by you with permission of the owner, arising out of any one fire.
7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The limits of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

#### **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**

##### **1. Bankruptcy**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

##### **2. Duties In The Event Of Occurrence, Claim or Suit**

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. Knowledge of an "occurrence" or an offense by your employees shall not, in itself, constitute knowledge to you unless your partners,"

executive officers", directors or insurance manager shall have actually received notice. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:
  - (1) Immediately record the specifics of the claim or "suit" and the date received; and
  - (2) Notify us as soon as practicable.
 You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
  - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation, settlement or defense of the claim or "suit"; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

##### **3. Legal Action Against Us**

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

##### **4. Other Insurance**

If other valid and collectible insurance is available to the

insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

**a. Primary Insurance**

This insurance is primary except when **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **c.** below.

**b. Excess Insurance**

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

- (1) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
- (2) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner; or
- (3) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Coverage A (Section I).

When this insurance is excess, we will have no duty under Coverage A or B to defend any claim or "suit" that any other insurer has a duty to defend any party against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to any party's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

**c. Method of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**5. Premium Audit**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

**6. Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

**7. Separation of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

**8. Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

**9. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If the notice is mailed, proof of mailing will be sufficient proof of notice.

**10. Liberalization**

If we adopt a change in our forms or rules which would broaden your coverage without an additional premium charge, your policy will automatically provide the additional coverages as of the date the revision is effective in your state.

**SECTION V - DEFINITIONS**

1. "Advertising injury" means injury arising out of one or more of the following offenses:
  - a. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - b. Oral or written publication of material that violates a person's right of privacy;
  - c. Misappropriation of advertising ideas or style of doing business; or
  - d. Infringement of copyright, title or slogan.
2. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".
3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
4. "Coverage territory" means:
  - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters and airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above; or
  - c. All parts of the world if:
    - (1) The injury or damage arises out of:
      - (a) Goods or products made or sold by you in the territory described in a. above; or
      - (b) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; and
    - (2) The insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.
5. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
6. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
  - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

  - a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
  - b. Your fulfilling the terms of the contract or agreement.
7. "Insured contract" means
  - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
  - b. A sidetrack agreement;
  - c. Any easement or license agreement;
  - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  - e. An elevator maintenance agreement;
  - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

  - (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
  - (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
    - (a) Preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
    - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
  - (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in b. above and supervisory, inspection, architectural or engineering activities.
8. "Loading or unloading" means the handling of property:
  - a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
  - b. While it is in or on an aircraft, watercraft or "auto"; or
  - c. While it is being moved from an aircraft, watercraft

- or "auto" to the place where it is finally delivered; but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
9. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- Bulldozers, farm machinery, forklifts and any other vehicles designed for use principally off public roads;
  - Vehicles maintained for use solely on or next to premises you own or rent;
  - Vehicles that travel on crawler treads;
  - Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - Power cranes, shovels, loaders, diggers or drills; or
    - Road construction or resurfacing equipment such as graders, scrapers or rollers;
  - Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
    - Cherry pickers and similar devices used to raise or lower workers;
  - Vehicles not described in a., b., c. or d. Above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types or permanently attached equipment are not "mobile equipment" but will be considered "autos":
- Equipment designed primarily for:
    - Snow removal;
    - Road maintenance, but not construction or resurfacing;
    - Street cleaning
  - Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
  - Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
10. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
11. "Personal injury" means injury, other than "bodily injury"

arising out of one or more of the following offenses:

- False arrest, detention or imprisonment;
- Malicious prosecution;
- The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;
- Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
- Oral or written publication of material that violates a person's right of privacy.

12. "Products-completed operations hazard":

- Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
  - Products that are still in your physical possession; or
  - Work that has not yet been completed or abandoned.
- "Your work" will be deemed completed at the earliest of the following times:
  - When all of the work called for in your contract has been completed.
  - When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
  - When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- This hazard does not include "bodily injury" or "property damage" arising out of:
  - The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
  - The existence of tools, uninstalled equipment or abandoned or unused materials;
  - Products or operations for which the classification listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

13. "Property damage" means:

- Physical injury to tangible property, including all resulting loss of use of that property. All such loss of

- use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss shall be deemed to occur at the time of the "occurrence" that caused it.
14. "Suit" means a civil proceeding in which damage because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
15. "Your product" means:
- a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
    - (1) You;
    - (2) Others trading under your name; or
    - (3) A person or organization whose business or assets you have acquired; and
  - b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
- "Your product" includes:
- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- b. The providing of or failure to provide warning or instructions.
- "Your product" does not include vending machines or other property rented to or located for the use of others but not sold.
16. "Your work" means:
- a. Work or operations performed by you or on your behalf; and
  - b. Materials, parts or equipment furnished in connection with such work or operations.
- "Your work" includes:
- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
  - b. The providing of or failure to provide warnings or instructions.
17. "Leased worker" means a worker provided to a client through an employee leasing agreement.
18. "Temporary worker" means a worker hired and employed by an employer to support or supplement another's work force in special work situations such as employee absence, temporary skill shortage, seasonal workloads and special temporary assignments such as temporary work for the production of motion pictures.

Includes copyrighted material of Insurance Services Office, Inc., with its permission  
Copyright, Insurance Services Office, Inc., 1996

## COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying by Endorsement under this policy as a Named Insured. If the Named Insured is a corporation, partnership or limited liability company, "you" and "your" only refers to the corporation, partnership or limited liability company and not to the principals, officers or any other natural person. The words "we", "us" and "our" refer to the Company providing this insurance. The word "insured" means any person or organization qualifying as such under SECTION II – WHO IS AN INSURED.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION V - DEFINITIONS.

### SECTION I - COVERAGES

#### COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

##### 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend any "suit" seeking those damages to which this insurance applies. However, we will have no duty to defend any party against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may at our discretion investigate any "occurrence" and settle any claim or "suit" that may result. But:
  - (1) The amount we will pay for damages is limited as described in SECTION III – LIMITS OF INSURANCE; and
  - (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A. or B. or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A. AND B.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"; and
  - (2) The "bodily injury" or "property damage" occurs during the policy period.
- c. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

##### 2. Exclusions

This insurance does not apply to:

###### a. Expected or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

###### b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or
- (2) That the insured would have in the absence of the contract or agreement.

###### c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
  - (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
  - (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.
- This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

**d. Workers' Compensation and Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

**e. Employer's Liability**

"Bodily injury" to:

- (1) An employee, "leased worker" or "temporary worker" of the insured arising out of and in the course of employment by the insured; or
- (2) The spouse, child, parent, brother or sister of that employee, "leased worker" or "temporary worker" of the insured as a consequence of (1) above.

This exclusion applies:

- (3) Whether the insured may be liable as an employer or in any other capacity; and
- (4) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

**f. Pollution**

- (1) "Bodily injury" or "property damage" resulting from the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot from equipment used to heat that building;

(ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

(iii) "Bodily injury" or "property damage" resulting from heat, smoke or fumes from a "hostile fire";

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

(i) Any insured; or

(ii) Any person or organization for whom you may be legally responsible; or

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

(i) "Bodily injury" or "property damage" resulting from the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electric, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels,

lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor.

- (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with your ongoing operations being performed by you or on your behalf by a contractor or subcontractor; or
- (iii) "Bodily injury" or "property damage" resulting from heat, smoke or fumes from a "hostile fire".

(2) Any loss, cost or expense resulting from any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

**g. Aircraft, Auto or Watercraft**

"Bodily injury" or "property damage" resulting from the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 51 feet long; and
  - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" resulting from the operation of any of the equipment listed in paragraph f.(2) or f.(3) of the definition of "mobile equipment" (SECTION V - DEFINITIONS).

**h. Mobile Equipment**

"Bodily injury" or "property damage" resulting from:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice or preparation for, a racing, speed or demolition contest or in any stunting activity.

**i. War**

"Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

**j. Damage to Property**

"Property damage" to:

- (1) Property you own, rent, lease or occupy; including any costs or expenses incurred by you, or any other

- person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
  - (3) Property you hold for storage, sale or safekeeping;
  - (4) Tools or equipment loaned to you if the tools or equipment are being used to perform operations at the time of loss.  
For the purposes of this paragraph (4), the most we will pay for tools or equipment loaned to you is \$10,000 per "occurrence".
  - (5) Property on your premises for the purpose of having operations performed on it by you or on your behalf;
  - (6) Property in your custody which is to be installed, erected or used in construction by you; or
  - (7) That particular part of any property:
    - (a) On which you or any contractor or subcontractor working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
    - (b) That must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph (1) of this exclusion does not apply to "property damage" ( other than damage by fire ) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in SECTION III – LIMITS OF INSURANCE.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (4), (5), (6) and (7) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (7)(b) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

**k. Damage to Your Product**

"Property damage" to "your product" resulting from it or any part of it.

**l. Damage to Your Work**

"Property damage" to "your work" resulting from it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**m. Damage to Impaired Property or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, resulting from:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property resulting from sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**n. Recall of Products, Work or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**o. Personal And Advertising Injury**

"Bodily injury" resulting from "personal and advertising injury".

**p. Asbestos**

"Bodily injury" or "property damage" resulting from or in any way related to asbestos, including but not limited to:

- (1) Inhaling, ingesting or prolonged physical exposure to asbestos or goods or products containing asbestos;
- (2) The use of asbestos in constructing or manufacturing any good, product or structure;
- (3) The removal of asbestos from any good, product or structure;
- (4) Any request, demand or order for the removal of asbestos from any good, product or structure;
- (5) The manufacture, sale, transportation, storage or disposal of asbestos or goods or products containing asbestos; or
- (6) The investigation, settlement or defense of any claim, "suit", proceeding, damages, loss, cost or expense excluded by (1) through (5) above.

**q. Lead**

"Bodily injury" or "property damage" resulting from or in any way related to lead, including but not limited to:

- (1) Any:
  - (a) Exposure to or existence of lead, paint containing lead, or any other material or substance containing lead; or
  - (b) Manufacture, distribution, sale, resale, rebranding, installation, repair, removal, encapsulation, abatement, replacement or handling of lead, paint containing lead, or any other material or substance containing lead;

whether or not the lead is or was at any time airborne as a particulate, contained in a product ingested, inhaled, transmitted in any fashion, or found in any form whatsoever.

- (2) Any:
  - (a) Testing for, monitoring, cleaning up, removing, abating, containing, treating or neutralizing lead, paint containing lead, or any other substance or material containing lead or in any way responding to or assessing the effects of lead;
  - (b) Request, demand or order to test for, monitor, clean up, remove, abate, contain, treat or neutralize lead, paint containing lead, or any other substance or material containing lead, or in any way respond to or assess the effects of lead.

- (3) The investigation, settlement or defense of any claim, "suit", proceeding, damages, loss, cost or expense excluded in (1) and (2) above.

**r. Fungi or Bacteria**

- (1) "Bodily injury" or "property damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.

- (2) Any loss, cost or expenses resulting from the abating, testing for, monitoring, cleaning up, removing, containing, treating detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any "fungi" or bacteria that are on, or contained in, a good or product intended for consumption.

**s. Subsidence of Land**

"Bodily injury" or "property damage" caused by the subsidence of land resulting from or attributable to any operation of the insured.

For the purposes of this exclusion, subsidence of land means the movement, sinking, settling, upheaval, sliding, collapse, abatement or disturbance of land.

**t. Claims In Progress**

- (1) Any loss or claim for damages resulting from or related to "bodily injury" or "property damage", whether known or unknown:
  - (a) Which first occurred prior to the inception date of this policy; or
  - (b) In which the original event of a continuing process occurred prior to the inception date of this policy.
- (2) Any loss or claim for damages resulting from or related to "bodily injury" or "property damage", whether known or unknown, which is in the process of settlement, adjustment or "suit" as of the inception date of this policy.

We shall have no duty to defend any insured against any loss, claim, "suit" or other proceeding alleging damages resulting from or related to "bodily injury" or "property damage" to which this exclusion applies.

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with the permission of the owner. A separate limit of insurance applies to this coverage as described in LIMITS OF INSURANCE (SECTION III).

**COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY**

**1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this coverage applies. We will have the right and duty to defend any "suit" seeking those damages to which this coverage applies. However, we will have no duty to defend any party against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:
  - (1) The amount we will pay for damages is limited as described in LIMITS OF INSURANCE (SECTION III); and
  - (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverage A or B or medical expenses under Coverage C.
- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

**2. Exclusions**

This insurance does not apply to:

**a. Knowing Violation Of Rights Of Another**

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

**b. Material Published With Knowledge Of Falsity**

"Personal and advertising injury" resulting from oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

**c. Material Published Prior To Policy Period**

"Personal and advertising injury" resulting from oral or written publication of material whose first publication took place before the beginning of the policy period.

**d. Criminal Acts**

"Personal and advertising injury" resulting from a criminal act committed by or at the direction of the insured.

**e. Contractual Liability**

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

**f. Breach Of Contract**

"Personal and advertising injury" resulting from a breach of contract, except an implied contract to use an-